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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX PEARL Options Fee Schedule to Remove Certain Credits and Increase Trading Permit Fees

April 12, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 30, 2022, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”) to remove certain credits and amend the monthly Trading Permit<sup>3</sup> fees for Members.<sup>4</sup>

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxoptions.com/rule-filings/pearl>, at MIAX PEARL’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

<sup>4</sup> The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100 and the Definitions Section of the Fee Schedule.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to remove certain credits and amend the monthly Trading Permit fees for Members. The Exchange notes that its Trading Permit fees are comparable to membership or other access type fees charged by other exchanges.

The Exchange initially filed this proposal on July 1, 2021 with the proposed fee changes being immediately effective ("First Proposed Rule Change").<sup>5</sup> The First Proposed Rule Change was published for comment in the Federal Register on July 15, 2021.<sup>6</sup> The Commission received one comment letter on the First Proposed Rule Change<sup>7</sup> and subsequently suspended the First Proposed Rule Change on August 27, 2021.<sup>8</sup> The Exchange withdrew the First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on October 29, 2021, with the proposed fee changes being effective beginning November 1, 2021 ("Second Proposed Rule Change").<sup>9</sup> The Second Proposed Rule Change addressed points raised in the SIG Letter and

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<sup>5</sup> See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR-PEARL-2021-32).

<sup>6</sup> See id.

<sup>7</sup> See Letter from Richard J. McDonald, Susquehanna International Group, LLC ("SIG"), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 ("SIG Letter").

<sup>8</sup> See Securities Exchange Act Release No. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021).

<sup>9</sup> See Securities Exchange Act Release No. 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54).

was published for comment in the Federal Register on November 17, 2021.<sup>10</sup> The Commission received no comment letters on the Second Proposed Rule Change. The Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and submitted a revised proposal for immediate effectiveness (“Third Proposed Rule Change”).<sup>11</sup> The Third Proposed Rule Change was published for comment in the Federal Register on January 10, 2022.<sup>12</sup> The Commission received no comment letters on the Third Proposed Rule Change. The Exchange withdrew the Third Proposed Rule Change on February 15, 2022 and submitted a revised proposal for immediate effectiveness, which was suspended on February 18, 2022 (“Fourth Proposed Rule Change”).<sup>13</sup> The Commission received one comment letter on the Fourth Proposed Rule Change.<sup>14</sup> The Exchange withdrew the Fourth Proposed Rule Change on March 30, 2022 and submits this revised proposal for immediate effectiveness (“Fifth Proposed Rule Change”). This Fifth Proposed Rule Change provides a revised justification for the proposed fees, which is in line with the justification provided by another exchange in a similar filing to adopt fees for Members to be active on that exchange.<sup>15</sup>

#### Removal of the “Monthly Volume Credit”

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018<sup>16</sup> to encourage Members to send

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<sup>10</sup> See id.

<sup>11</sup> Securities Exchange Act Release No. 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR-PEARL-2021-59).

<sup>12</sup> Id.

<sup>13</sup> Securities Exchange Act Release No. 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR-PEARL-2022-05).

<sup>14</sup> See Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (“SIG Letter 2”).

<sup>15</sup> See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposal to adopt monthly membership fees).

<sup>16</sup> See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

increased Priority Customer<sup>17</sup> order flow to the Exchange, which the Exchange applied to the assessment of certain non-transaction fees for that Member. The Exchange applies a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX Interface<sup>18</sup> or MEO Interface.<sup>19</sup> Currently, the Exchange assesses the Monthly Volume Credit to each Member that has executed Priority Customer volume along with that of its

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<sup>17</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

<sup>18</sup> The term “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>19</sup> The term “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

affiliates,<sup>20</sup> not including Excluded Contracts,<sup>21</sup> of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (“TCV”),<sup>22</sup> as set forth in the following table:

<b>Type of Member Connection</b>	<b>Monthly Volume Credit</b>
Member that connects via the FIX Interface	\$250
Member that connects via the MEO Interface	\$1,000

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. Prior to the First Proposed Rule Change, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

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<sup>20</sup> “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to [membership@miaxoptions.com](mailto:membership@miaxoptions.com) no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

<sup>21</sup> “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>22</sup> “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section of the Fee Schedule.

Beginning with the First Proposed Rule Change, the Exchange's proposals included an amendment to the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to attract order flow by lowering the initial fixed cost for Members. The Monthly Volume Credit has achieved its purpose and the Exchange believes it is appropriate to remove this credit. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share.

#### Removal of the Trading Permit Fee Credit

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote "\*" below the Trading Permit fee table. Prior to the First Proposed Rule Change, the Trading Permit fee credit was applicable to Members that connect via both the MEO and FIX Interfaces. Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members received a \$100 monthly credit towards the Trading Permit fees applicable to the MEO Interface prior to the First Proposed Rule Change. The Exchange proposes to remove the Trading Permit fee credit and delete footnote "\*" from Section 3)b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via both the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purpose and the Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

#### Amendment of Trading Permit Fees

The Exchange proposes to amend the Fee Schedule to amend the fees for Trading Permits. The Exchange issues Trading Permits to Members who are either Electronic Exchange

Members<sup>23</sup> (“EEMs”) or Market Makers.<sup>24</sup> The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of “Non-Transaction Fees Volume-Based Tiers”<sup>25</sup> in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange – the FIX Interface and/or the MEO Interface.

Current Trading Permit Fees. Currently, each Member who connects to the System<sup>26</sup> via the FIX Interface is assessed the following monthly Trading Permit fees:

- (i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, \$250;
- (ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, \$350; and
- (iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, \$450.

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<sup>23</sup> The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule.

<sup>24</sup> The term “Market Maker” or “MM” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules. See the Definitions Section of the Fee Schedule.

<sup>25</sup> See the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

<sup>26</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

Each Member who connects to the System via the MEO Interface is assessed the following monthly Trading Permit fees:

- (i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, \$300;
- (ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, \$400; and
- (iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, \$500.

Proposed Trading Permit Fees. The Exchange proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface will be assessed the following monthly Trading Permit fees:

- (i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, \$500;
- (ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, \$1,000; and
- (iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, \$1,500.

Each Member who connects to the System via the MEO Interface will be assessed the following monthly Trading Permit fees:

- (i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, \$2,500;
- (ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, \$4,000; and
- (iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, \$6,000.



Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

Trading Permits, like membership fees, grant access and allow Members to be active on the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, or “membership” on other exchanges, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange proposes to increase its monthly fees since it had not done so since the fees were first adopted in 2018.<sup>27</sup> The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX Emerald, LLC (“MIAX Emerald”), charge a similar, fixed trading permit fee in a similar range of trading permit fees to certain users, and a similar, varying trading permit fee in a similar range of trading permit fees to other users, based upon the number of assignments of option classes or the percentage of volume in option classes.<sup>28</sup>

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange’s Trading Permits are in line with, or cheaper than, the similar trading permit and membership fees charged by other options exchanges. The below table also illustrates how the Exchange has historically undercharged for access via Trading Permits as compared to other

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<sup>27</sup> See supra note 16.

<sup>28</sup> See the MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b), available at <https://www.miaxoptions.com/fees> (last visited March 9, 2022).

options exchanges. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for access and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar access.

<b>Exchange</b>	<b>Monthly Membership/Trading Permit Fee</b>
MIAX Pearl Options (as proposed)	Trading Permit access via FIX Interface: Tier 1: \$500 Tier 2: \$1,000 Tier 3: \$1,500  Trading Permit access via MEO Interface: Tier 1: \$2,500 Tier 2: \$4,000 Tier 3: \$6,000
New York Stock Exchange LLC ("NYSE") <sup>29</sup>	Annual trading license fee for member organizations ranges from approximately \$25,000 to \$50,000 based on the type of member organization and number of trading licenses
NYSE Arca, Inc. ("NYSE Arca") <sup>30</sup>	Options Trading Permits: \$6,000 for up to 175 option issues Additional \$5,000 for up to 350 option issues Additional \$4,000 for up to 1,000 option issues Additional \$3,000 for all option issues Additional \$1,000 for the 5 <sup>th</sup> OTP and each OTP thereafter
NYSE American, LLC ("NYSE American") <sup>31</sup>	ATP Trading Permits: \$8,000 for up to 60 plus the bottom 45% of option issues Additional \$6,000 for up to 150 plus the bottom 45% of option issues Additional \$5,000 for up to 500 plus the bottom 45% of option issues Additional \$4,000 for up to 1,100 plus the bottom 45% of option issues Additional \$3,000 for all option issues Additional \$2,000 for 6 <sup>th</sup> to 9 <sup>th</sup> ATPs (plus additional fee for premium products)

<sup>29</sup> See "Trading Licenses," NYSE Price List 2021 (last updated December 1, 2021), available at: [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf).

<sup>30</sup> See NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) (last visited March 9, 2022).

<sup>31</sup> See NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23-24, available at [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf) (last visited March 9, 2022).

Nasdaq PHLX LLC ("Nasdaq PHLX") <sup>32</sup>	<p>Streaming Quote Trader permit fees:</p> <p>Tier 1 (up to 200 option classes): \$0.00</p> <p>Tier 2 (up to 400 option classes): \$2,200</p> <p>Tier 3 (up to 600 option classes): \$3,200</p> <p>Tier 4 (up to 800 option classes): \$4,200</p> <p>Tier 5 (up to 1,000 option classes): \$5,200</p> <p>Tier 6 (up to 1,200 option classes): \$6,200</p> <p>Tier 7 (all option classes): \$7,200</p> <p>Remote Market Maker Organization permit fees:</p> <p>Tier 1 (less than 100 option classes): \$5,500</p> <p>Tier 2 (more than 100 and less than 999 option classes): \$8,000</p> <p>Tier 3 (1,000 or more option classes): \$11,000</p>
Nasdaq ISE LLC ("Nasdaq ISE") <sup>33</sup>	<p>Access Fees:</p> <p>Primary Market Maker: \$5,000 per membership</p> <p>Competitive Market Maker: \$2,500 per membership</p>
Nasdaq Stock Market LLC ("Nasdaq") <sup>34</sup>	Annual membership fee is \$3,000 plus a monthly \$1,250 trading rights fee (together with the annual membership fee, totaling \$18,000 per year)
Cboe Exchange, Inc. ("Cboe") <sup>35</sup>	<p>Electronic Trading Permit Fees:</p> <p>Market Maker: \$5,000</p> <p>Electronic Access Permit: \$3,000</p> <p>Clearing TPH Permit: \$2,000</p>
Cboe C2 Exchange, Inc. ("Cboe C2") <sup>36</sup>	<p>Access Permit Fees for Market Makers: \$5,000</p> <p>Electronic Access Permits: \$1,000</p>
Cboe BZX Exchange,	Annual membership fee of \$2,500 plus an additional fee of \$350 per

<sup>32</sup> See Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (last visited March 9, 2022).

<sup>33</sup> See Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited March 9, 2022).

<sup>34</sup> See "NASDAQ Membership Fees," Nasdaq Price List, available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#membership>. See also Securities Exchange Act Release No. 34-81133 (July 12, 2017), 82 FR 32904 (July 18, 2017) (SR-NASDAQ-2017-065) (discussing the reasonableness of Nasdaq's fees).

<sup>35</sup> See Cboe Fee Schedule, Electronic Trading Permit Fees, available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf) (last visited March 9, 2022).

<sup>36</sup> See Cboe C2 Fee Schedule, Access Fees, available at [https://www.cboe.com/us/options/membership/fee\\_schedule/ctwo/](https://www.cboe.com/us/options/membership/fee_schedule/ctwo/) (last visited March 9, 2022).

Inc. (“Cboe BZX”) <sup>37</sup>	month for each additional MPID a member maintains other than their first (i.e., an annual fee of \$4,200 per additional MPID)
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### Implementation

The proposed fee changes are effective April 1, 2022.

### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>38</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>39</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

### Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons because, in order to attract order flow when the Exchange first launched

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<sup>37</sup> See “Membership Fees” and “Market Participant Identifier (‘MPID’) Fees” sections of the Cboe BZX Fee Schedule, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/).

<sup>38</sup> 15 U.S.C. 78f(b).

<sup>39</sup> 15 U.S.C. 78f(b)(4) and (5).

operations, the Exchange established the Monthly Volume Credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and the current type and amount of Priority Customer volume executed on the Exchange. The Exchange believes that the Exchange's Priority Customer rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons because, in order to attract order flow and membership after the Exchange first launched operations, the Exchange established the Trading Permit fee credit to lower the costs for Members that connect via both the MEO Interface and FIX Interface. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

#### Trading Permit Fee Increase

The Exchange believes that there is value in being a Member of the Exchange, retaining that Membership as the Exchange's market share has grown, and that the proposed Trading Permit fees are reasonable because they are in the range of similar types of membership fees charged by other exchanges with similar market share. The proposed monthly Trading Permit fees are lower than or comparable to the membership and trading permit fees imposed by several other national securities exchanges that charge such fees.<sup>40</sup>

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<sup>40</sup> See supra notes 29-37.

The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because they would be assessed equally across all Members or firms that seek to become Members. The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange's growth in recent years to consistently be approximately 4-5% of the overall equity options market share. To illustrate, the Exchange currently has 41 Members.<sup>41</sup> However, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 75 members, NYSE Arca Options has 71 members, and Cboe has 233 members.<sup>42</sup> Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.

The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equity options exchanges. However, the Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory, even for a

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<sup>41</sup> See MIAX Pearl Options Exchange Member Directory, available at <https://www.miaxoptions.com/exchange-members/pearl>.

<sup>42</sup> See NYSE American Options Membership Directory, available at <https://www.nyse.com/markets/american-options/membership> (last visited March 9, 2022); NYSE Arca Options Membership Directory, available at <https://www.nyse.com/markets/arca-options/membership> (last visited March 9, 2022); Cboe Members and Sponsored Participants, Form 1 Amendment dated February 17, 2022, Exhibit M, available at <https://www.sec.gov/Archives/edgar/vpr/2200/22000797.pdf> (last visited March 9, 2022).

broker-dealer that deems it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fees.

The Exchange further believes that the proposed fees would be an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and are not unfairly discriminatory. As the Commission noted in its Concept Release Concerning Self-Regulation, the Commission to date has not issued detailed rules specifying proper funding levels of self-regulatory organization (“SRO”) regulatory programs, or how costs should be allocated among the various SRO constituencies. Rather, the Commission has examined the SROs to determine whether they are complying with their statutory responsibilities. This approach was developed in response to the diverse characteristics and roles of the various SROs and the markets they operate. The mechanics of SRO funding, including the amount of revenue that is spent on regulation and how that amount is allocated among various regulatory operations, is related to the type of market that an SRO is operating. Thus, each SRO and its financial structure is, to a certain extent, unique. While this uniqueness can result in different levels of SRO funding across markets, it also is a reflection of one of the primary underpinnings of the National Market System. Specifically, by fostering an environment in which diverse markets with diverse business models compete within a unified National Market System, investors and market participants benefit.<sup>43</sup>

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act<sup>44</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. Effective regulation is central to the proper functioning of the securities markets.

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<sup>43</sup> See Securities Exchange Act Release No. 34-50700 (November 22, 2004), 69 FR 71255, 71267-68 (December 8, 2004) (File No. S7-40-04).

<sup>44</sup> 15 U.S.C. 78f(b)(4) and (5).

Recognizing the importance of such efforts, Congress decided to require national securities exchanges to register with the Commission as self-regulatory organizations to carry out the purposes of the Act. The Exchange therefore believes that it is critical to ensure that regulation is appropriately funded. The monthly Trading Permit fees are expected to provide a source of funding towards the Exchange's costs related to onboarding Members and providing ongoing support.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>45</sup> the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share. The Exchange's proposed Trading Permit fees will be lower than or similar to the cost of membership and trading permits on other exchanges,<sup>46</sup> and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership and trading permit fees are subject to competition

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<sup>45</sup> 15 U.S.C. 78f(8).

<sup>46</sup> See supra note 40.



from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result.

#### Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3-6% of the U.S. equity options industry.<sup>47</sup> The Exchange is not aware of any evidence that a market share of approximately 3-6% provides the Exchange with anti-competitive pricing power. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange.

The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

As described above, the Exchange received one comment letter on the First Proposed Rule Change.<sup>48</sup> The Exchange responded to the comment letter in the Second Proposed Rule

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<sup>47</sup> See "The market at a glance," available at <https://www.miaxoptions.com/> (last visited December 20, 2021).

<sup>48</sup> See supra note 7.

Change. No comment letters were received in response to the Second or Third Proposed Rule Changes. The Exchange received one comment letter on the Fourth Proposed Rule Change,<sup>49</sup> which the Exchange responds to in this filing.

The First, Second, Third and Fourth Proposed Rule Changes all provided cost-based justifications to support the proposed fee changes. In this Fifth Proposed Rule Change, the Exchange determined to utilize a competition based approach to support the proposed fee changes. Because the SIG Letters are primarily focused on the Exchange's prior cost justifications in the First, Second, Third and Fourth Proposed Rule Changes, the Exchange believes the SIG's assertions are no longer germane to the current filing as the Exchange no longer utilizes a cost justification to support the proposed fees.

Pursuant to the Guidance, Staff may consider whether a proposed fee is constrained by significant competitive forces in assessing the reasonableness of the proposed fee.<sup>50</sup> This is in line with a recent filing by MEMX LLC ("MEMX"), in which MEMX argued its proposed monthly membership fee was reasonable because it was constrained by competitive forces.<sup>51</sup> MEMX's monthly membership fee filing received no comment letters and remains in effect today, past the Commission's 60-day suspension deadline. The Exchange's trading permit fees are the equivalent of MEMX's "membership fee," BOX's "participant fee" and "market maker trading permit fee," and other exchanges' "access" fees: they are all fees to solely provide access and allow activity to the specific marketplace. These are all monthly fees assessed to members for trading on each particular exchange. The Exchange now argues that its proposed fees are constrained by competition in the same way MEMX's membership fees are constrained by competition.

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<sup>49</sup> See supra note 14.

<sup>50</sup> See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (the "Guidance").

<sup>51</sup> See supra note 15.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>52</sup> and Rule 19b-4(f)(2)<sup>53</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2022-09 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2022-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

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<sup>52</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>53</sup> 17 CFR 240.19b-4(f)(2).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-PEARL-2022-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>54</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>54</sup> 17 CFR 200.30-3(a)(12).